

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ERNIE RICARDO FERNANDEZ,  
individually, on behalf of all others similarly  
situated, and on behalf of the general public,

Plaintiff,

v.

BRINK'S INCORPORATED, a Delaware  
corporation, and DOES 1-5,

Defendants.

Case No. 15-cv-02667-JSW

**ORDER GRANTING, IN PART,  
MOTION TO DISMISS OR TO STAY  
AND DENYING, WITHOUT  
PREJUDICE, MOTION TO STRIKE OR  
FOR A MORE DEFINITE STATEMENT**

Re: Docket Nos. 14, 17

Now before the Court for consideration are the motion to dismiss or to stay, filed by Defendant, Brink's Incorporated ("Brinks"), and the motion to strike or for a more definite statement, filed by Plaintiff, Ernie Ricardo Fernandez ("Fernandez"). The Court has considered the parties' papers, relevant legal authority, and the record in this case, and the Court finds the motions suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). The Court VACATES the hearing scheduled for September 4, 2015, and it HEREBY STAYS this action.

**BACKGROUND**

On April 8, 2015, Fernandez filed this putative class action in the Superior Court of California for the City and County of San Francisco. Brinks employed Fernandez as a messenger from October 13, 2008 through his termination on January 27, 2015. (Docket No. 1, Notice of Removal, Ex. A (Complaint ("Compl.") ¶¶ 11-12.) Fernandez alleges that Brinks violated various provisions of California's Labor Code by: (1) failing to pay overtime wages; (2) failing to pay premium rest period wages; (3) failing to pay premium meal period wages; and (4) failing to pay wages due at termination. Based on these alleged violations of the Labor Code, Fernandez also asserts a claim under California's Unfair Competition Law, Business and Professions Code section

17200, *et seq.*, (the “UCL claim”), and a claim under the Labor Code’s Private Attorneys General Act (the PAGA claim”). According to the allegations in the Complaint, the putative class period begins on April 8, 2011 and the PAGA claim period begins on February 26, 2014. (Compl., ¶ 18.) Brinks filed its Answer on June 11, 2015, and it removed the action to this Court on June 12, 2015. (Docket No. 1, Notice of Removal, Ex. B (Answer).)

Fernandez is not the first employee to file wage and hour claims against Brinks. On May 5, 2014, Timothy Belew (“Belew”) initiated a class action against Brinks in San Diego County Superior Court. Belew filed an amended complaint on June 23, 2014, which Brinks removed to the United States District Court for the Southern District of California. *Belew v. Brink’s Incorporated*, 14-cv-1748 JAH JLB (the “*Belew* litigation”).<sup>1</sup> Belew asserts claims against Brinks for failure to pay all overtime wages, failure to provide complete and accurate wage statements, and failure to pay wages at termination. Belew also asserts a UCL claim and a PAGA claim. On April 22, 2015, district court in the *Belew* litigation granted a motion for preliminary approval of a class settlement and certified a settlement class of “[a]ll current and former armored truck drivers and messengers who performed work for Brink’s, Incorporated, in the State of California during the Class Period. The Class Period is from January 1, 2014 through the date of preliminary approval.” (Def. RJN, Ex. 6 (Order Granting Preliminary Approval at 3:1-4).) The final fairness hearing is scheduled for August 31, 2015. (*Id.* at 4:26-27.) Fernandez has opted out of the *Belew* litigation. (Declaration of Brent Robinson in Opposition to Motion to Dismiss or to Stay (“Robinson Decl.”), ¶ 3.)

On February 17, 2015, Dorian Ceron (“Ceron”) initiated a putative class action against Brinks and Brink’s Global Services, USA, Inc. in the United States District Court for the Central District of California. *Ceron v. Brink’s Incorporated, et al.*, No. 15-cv-1129-JFW (JCx) (the “*Ceron* federal litigation”). (*See* Def. RJN, Ex. 1 (*Ceron* Federal Complaint).) Ceron asserts

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<sup>1</sup> The original complaint, the amended complaint, and the notice of removal in the *Belew* litigation are attached as Exhibits 5, 8 and 9 to Brinks’ request for judicial notice in support of its motion (“Def. RJN”). Fernandez does not object to the request for judicial notice. Because the exhibits attached to the request for judicial notice are court records, the Court grants the request, and it takes judicial notice of the fact that these documents have been filed.

claims for failure to pay all overtime wages, violation of the Fair Labor Standards Act, failure to provide rest periods, failure to provide meal periods, wage statement penalties, and a UCL claim. The class period in the *Ceron* federal litigation begins on February 17, 2011. (*Ceron* Federal Complaint, ¶ 4.) Ceron has objected to the *Belew* settlement on the grounds that the release encompasses claims that were not asserted in that case. (See Robinson Decl., ¶ 2, Ex. A (Objection to Settlement).) The district court in the *Ceron* federal litigation granted the defendants' motion to stay, pending a ruling on the motion for final approval in the *Belew* litigation. (Def. RJN, Ex. 2 (Minute Order at pp. 4-5.)

Ceron also initiated a state case asserting a single PAGA claim against Brinks and Brink's Global Services, USA, Inc., in Los Angeles County Superior Court (the "*Ceron* state litigation"). *Ceron v. Brink's Incorporated, et al.*, Case No. BC576462. (Def. RJN, Ex. 3 (*Ceron* State Complaint.) Ceron proposes to represent all current and non-exempt employees of the defendants who worked in California from March 24, 2014 "to the present date." (*Ceron* State Complaint, ¶ 19.) The defendants in the *Ceron* state litigation filed a motion to stay that case, pending a ruling on the motion for final approval in the *Belew* litigation.<sup>2</sup>

### ANALYSIS

Brinks moves to dismiss, or to stay, the PAGA claim in this case, pursuant to the *Colorado River* doctrine, in favor of the *Ceron* state court litigation. See *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 818-19 (1976). It also moves to dismiss, or stay, the remaining claims on the basis that they are duplicative of the claims pending in the *Ceron* federal litigation. See *Adams v. California Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), *overruled on other grounds by Taylor v. Sturgell*, 533 U.S. 880, 904 (2008). As an alternative to dismissal, Brinks asks the Court to exercise its inherent authority to stay this case pending resolution of the *Belew* motion for final approval and the *Ceron* cases. For the reasons set forth in the remainder of this Order, the Court concludes that a brief stay pending a ruling on the

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<sup>2</sup> The Court conducted a search of the docket in the *Ceron* state court litigation, through the Los Angeles County Superior Court website, [www.lacourt.org/casesummary](http://www.lacourt.org/casesummary). It appears that the Superior Court granted the motion to stay.

1 motion for final approval in the *Belew* litigation, rather than dismissal, is the appropriate remedy.

2 “[T]he power to stay proceedings is incidental to the power inherent in every court to  
3 control disposition of the cases on its docket with economy of time and effort for itself, for  
4 counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “The exertion of this  
5 power calls for the exercise of sound discretion.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.  
6 1962). The Court considers a number of factors in deciding whether to grant a stay. *Id.* (citing  
7 *Landis*, 299 U.S. at 254-55). First, the Court considers the “possible damage which may result  
8 from granting a stay.” *Id.* This case is in its early stages, and the parties have not yet appeared for  
9 the initial case management conference, which is scheduled for September 11, 2015. In addition,  
10 the motion for final approval in the *Belew* litigation is scheduled for hearing on August 31, 2015.  
11 Therefore, the stay will not be lengthy.

12 The second factor the Court considers is the hardship or inequity which a party may suffer  
13 in being required to go forward. *Id.* The fact that Brinks might be “required to defend a suit,  
14 without more, does not constitute a clear case of hardship or iniquity within the meaning of  
15 *Landis*.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005) (internal quotations and  
16 citation omitted). On balance, the Court finds that this factor is neutral. To the extent both parties  
17 could be harmed by continued litigation, that weighs in favor of staying this case.

18 The third factor the Court considers is “the orderly course of justice measured in terms of  
19 the simplifying or complicating of issues, proof, and questions of law which could be expected to  
20 result from a stay.” *Id.* Because Fernandez has opted out of the *Belew* settlement, he, personally,  
21 will not be bound by that settlement. However, the ruling in the *Belew* litigation will impact the  
22 putative class claims and the PAGA claim.<sup>3</sup> In addition, a ruling on Ceron’s objection to the  
23 *Belew* settlement also may alter the scope of the *Ceron* federal litigation, as well as the *Ceron* state  
24 litigation, which, in turn, could alter the landscape of this case.

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26 <sup>3</sup> Fernandez has stated that he intends to dismiss his class claims and will seek leave to  
27 amend his complaint to include six additional individuals who also opted out of the *Belew*  
28 settlement. (Robinson Decl., ¶¶ 4-5.) As of the date of this Order, Fernandez has neither  
dismissed the putative class claims nor filed a motion for leave to amend. Accordingly, the Court  
shall address those issues once it lifts the stay in this case.

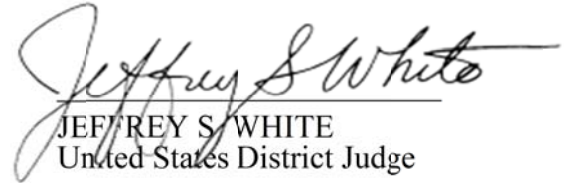
1 Accordingly, the Court exercises its inherent authority to stay this litigation pending a  
2 ruling on the motion for final approval in the *Belew* litigation.

3 **CONCLUSION**

4 For the foregoing reasons, the Court GRANTS, IN PART, AND DENIES, IN PART,  
5 Brinks' motion to dismiss or to stay. In light of this ruling, the Court DENIES, without prejudice,  
6 the motion to strike or for a more definite statement. The Court VACATES the case management  
7 conference scheduled for September 11, 2015. The Court ORDERES the parties to file a **joint**  
8 status report within ten (10) days of the *Belew* court's ruling on the motion for final approval. The  
9 parties shall attach a copy of the ruling to their joint status report and shall set forth their positions  
10 on how this litigation should proceed.

11 **IT IS SO ORDERED.**

12 Dated: August 25, 2015

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15 JEFFREY S. WHITE  
16 United States District Judge  
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